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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,363	07/09/2003	Jerome Swartz	044XXF	2322

7590

06/02/2004

Kirschstein, Ottinger, Israel & Schiffmiller, P.C.  
489 Fifth Avenue  
New York, NY 10017-6105

EXAMINER

CHERRY, EUNCHA P

ART UNIT	PAPER NUMBER
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2872

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n No.

10/616,363

Applicant(s)

SWARTZ ET AL.

Examin r

EUNCHA P. CHERRY

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 31-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 31-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Swartz et al (US Patent No. 5,966,230).

Swartz et al discloses a scan module for scanning indicia to be electro-optically read (see Fig. 4), the module comprising:

a substrate having a generally planar substrate portion lying in a substrate plane (122), and a raised substrate portion elevated above the substrate plane (123) ;

a scan element mounted on the raised substrate portion, and including an oscillatable scan mirror lying in a mirror plane inclined relative to the substrate plane (118);

focusing lens integrally connected to the substrate;

a light source integrated with the substrate and the scan element (122), and operative for emitting a light beam in a direction parallel to the substrate plane through the focusing

Art Unit: 2872

lens to the scan mirror for reflection therefrom at an angle away from the substrate as a focused scanning beam; and

magnifying lens integrally connected to the substrate in juxtaposition with the scan mirror, and operative for magnifying the angle of reflection of the focused scanning beam (146).

The substrate is constituted of semiconductor material and the raised substrate portion has a surface inclined at a 45 degree angle relative to the substrate plane (see Fig. 4). The scan element includes torsion hinges for supporting the scan mirror for oscillating movement (see Fig. 3).

The light source is a semiconductor laser diode for emitting the light beam as a laser beam (112). The focusing lens is a convex lens (see 144) wherein the magnifying lens is a concave lens (see 146). The focusing lens and the magnifying lens have optical powers of opposite polarity. The support in which the substrate, the scan element, the focusing lens and the light source are accommodated, wherein the support has an opening, and wherein the magnifying lens is mounted at the opening of the support (see Fig. 4).

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EUNCHA P.

Art Unit: 2872

CHERRY whose telephone number is 571-272-2310. The examiner can normally be reached on M-F 6:30-4:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, DREW DUNN can be reached on 571-272-2312. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



EUNCHAR P. CHERRY  
PRIMARY EXAMINER